

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, JUNE 9, 1994

Acting Chairman Graham called the meeting to order at 1:50 p.m. at the Whitman Inn, Walla Walla, Washington.

MEMBERS PRESENT: **PATRICK GRAHAM; ARDITH DIVINE and EDWARD HEAVEY; and Ex Officio Member SENATOR MARGARITA PRENTICE.**

OTHERS PRESENT: **FRANK L. MILLER, Director; NEAL NUNAMAKER, Deputy Director; SHARON TOLTON, Assistant Director, Special Operations; BEN BISHOP, Assistant Director, Licensing; KIM O'NEAL, Assistant Attorney General; ROSELYN MARCUS; Assistant Attorney General, CARRIE SUTHERLAND, Program Manager, Compliance and Hearings; and SUSAN GREEN, Executive Secretary.**

Acting Chairman Graham said he is filling in for Chairman Tull, who is absent today. He welcomed Senator Margarita Prentice to the Commission as an ex officio member. She has been appointed to the position vacated by Senator Moore.

STAFF REPORTS

Director Miller said staff reports will be reserved for tomorrow.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS, and TRIBAL CERTIFICATIONS

Mr. Bishop said the last entry for the certifications is a separate report on Capital Gaming International, Inc, which is found on page 19. This approval should be a separate action. There is a separate document on this company that was provided to the commissioners. **Commissioner Heavey** moved that the licenses, changes, withdrawals and tribal certifications be acted on in accordance with the recommendation of Commission staff; **Commissioner Divine** seconded the motion, motion carried.

CAPITAL GAMING INTERNATIONAL, INC.

d/b/a British American Bingo

Mr. Bishop said the Muckleshoot Tribe has submitted this applicant for certification as a management company/financier by the Commission. This is a New Jersey corporation with offices in West Atlantic City, New Jersey; the subsidiary, British American Bingo, is also a New Jersey corporation, but its headquarters is located in Pheonix, Arizona. The officers were all investigated by the Gambling Commission and nothing was found to preclude licensing. The personal source of funds was not addressed because there are no shareholders who own a substantial interest within the corporation. British American Bingo is registered in the State of Washington with the Secretary of State and the Department of Revenue and met all necessary requirements to do business. Registered agent is Jack Caskey of Seattle.

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The organization has class III gaming contracts with the Confederated Tribes of the Umatilla Indian Reservation in Pendleton, Oregon; and with the Cow Creek Tribe in Roseburg, Oregon. They have class II contracts with other tribes in other states. Jeff Hamilton is the director of finance and general manager of the gambling operation. Staff recommends certification as a class III management company and financier. Representatives are present from the Muckleshoot Tribe and the company.

Commissioner Heavey asked that a representative discuss their plans. **Mr. Papazian**, representative from Capital Gaming, said Mary Prevost is here as a tribal representative also. He said there are proposals yet to be negotiated, and they plan to have a class III gaming facility with the Muckleshoot Indian Tribe. The scope of their services may be lessened to provide consulting and financing, but whatever the results of negotiating are, they fully intend to meet the requirements of the Commission. He estimated it would take six to eight months to construct the facility and get the doors open.

Commissioner Heavey asked about their other business involvements in other states; **Mr. Papazian** said Capital Gaming has another subsidiary, which is Crescent City Capital Development Corporation. That company was granted a license on January 11, 1994, by the Louisiana State Police to operate a gaming river boat, which is currently under construction for an estimated opening in January 1995. He said the company has other projects in developmental stages. The Rockford, Illinois, riverboat gaming project is on hold because there are no more licenses to be had at this point. He said the company is also working with the Narragansett Tribe in Rhode Island, which is presently involved in litigation with the state. In Philadelphia, Capital Gaming has another subsidiary that has optioned real estate on the Philadelphia river front in anticipation of gaming opening up there. He said the company's chairman, Jack Davis is the "grandfather" of gaming in New Jersey and headed up Resorts International, which was the first casino in the state. Ed Tracy is a past-president of the Trump organization; the executive director of compliance was the superintendent of state police for a number of years and oversaw the regulation of gaming. The company's focus now is on the secondary gaming market that includes Indian gaming and river boat gaming.

Commissioner Heavey asked if any of their operations have been unsuccessful; **Mr. Papazian** said no; and they are keenly aware of their obligations to all regulatory agencies and they do not go forward without having all the approvals and licenses they need in place. **Commissioner Heavey** asked how they usually offer services; **Mr. Papazian** said they use a management contract approach and have staff experienced in construction, human resources and training. They sell a total package to the Tribe and handle raising the money, providing the expertise for getting the facility constructed, and they work with the different ordinances of each tribe to staff the casino. He said they want to be able to work with a particular tribe for five years or so and then turn the operation over completely to the Tribe when they are ready. **Commissioner Heavey** asked what their role is in financing; **Mr. Papazian** said the company is publicly held and has more than 3,000 shareholders; they issued bonds and raised money for these various projects. They have specific disbursement requirements to get access of those monies to fund each project. They currently have all the money necessary for the Muckleshoot project set aside. They become the lender to the Tribe and recover the loan over the course of the management contract. They charge minimal interest.

Commissioner Divine asked what will happen if the Tribe's operation is not successful; **Mr. Papazian** said the law protects the tribes and the company cannot seize tribal assets if the venture is unsuccessful. He said that's the risk of entering into this business and they are willing to assume that risk.

Ms. Prevost said she works with the Muckleshoot Indian Tribe, and that the plans are not finalized as to what the facility will look like. The casino will be regulated under the terms of the tribal-state compact. Their location is about 10 miles off of Interstate 5 in Auburn and they hope to begin working on that facility soon. **Director Miller** said the tribe has been negotiating with the Commission for a race track also, but that is a

separate issue and has not gone forward yet.

Commissioner Divine moved for approval; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

REVIEW OF FRIDAY'S AGENDA

Sharon Tolton said staff reports will be given tomorrow by the director. There are rules on tomorrow's agenda for final action that include housekeeping changes and bingo rules. Staff will request tomorrow that Item 3 (D) be continued until July. The next item is up for final action tomorrow and is the result of a petition from the Recreational Gaming Association for changes in card room rules, including adding pai gow poker and pan, reorganizing the structure on wagering limits on multiple rounds and adding the ability to have a house dealer on poker games. Item 5 is now up for final action in July at the request of the Commission. Item 6 is presented by staff for discussion and possible emergency filing as a result of HB 2382, which was passed by the legislature this session and signed into law by Gov. Lowry. This involves an increase in fees for playing time in card rooms.

Ms. Tolton said Item 7 is a petition presented by the Washington Federation of Clubs for discussion and possible filing. They request that the Commission clarify a rule that currently requires that the center position be announced at bingo games. The group is asking that this continue to be put into the camera but not be verbally announced because it slows down the game. **Director Miller** said the emergency request to pass item 6, if filed for discussion today, will be on the agenda for three months of discussion.

HEARING ON APPEALS

Peter J. Mullin, III, Case #94-0007

Appeal of Revocation of License to Operate as a Cardroom Employee.

Director Miller said that Mr. Mullin's case was heard at the last meeting. The decision was carried over to this meeting, but all testimony has been heard.

Richard F. Rebar, case # 94-0009. Appeal of Revocation of License to Operate as a Cardroom Employee.

Ms. Marcus said that Mr. Rebar is here representing himself.

Mr. Rebar said this case is about an after-hours card game that occurred at a friend's house on New Year's Eve at about 3:00 a.m. He said if it's determined that it was reasonable for him to assume the game was illegal, then does their education at the hands of the Gambling Commission equip them to determine the difference between the two, and do they have an obligation to report it. **Mr. Rebar** said he does not know for a fact that the game was illegal and that the house was making a profit. He has testimony from Agent Drumheller where is said approximately 23 hands were dealt every 45 minutes, which works out to 30 hands an hour, and he estimated that the average taken from each pot was \$2.00, and that the longest game he played in was eight hours. That works out to \$480. **Mr. Rebar** said Agent Drumheller testified that he estimated the expenses totalled \$500. **Mr. Rebar** said that means the game was losing \$20, so it was not profitable for the house owner. He said if it was not profitable, then it was not illegal and not his duty to report the game.

Mr. Rebar said that Agent Drumheller's testimony was that he did not know the person from the Tulalip casino who referred him to the game, and that he only referred to him as Doug. He said Agent Drumheller must have known who he was because he worked at the casino and was well-known by agents. He said he works at the

Tulalip Casino. He said he was manager of Arigotto's in North Seattle and one of the agents who participated in the raid played regularly at Arigotto's. He said he didn't know Doug's last name and didn't know Doug. **Mr. Rebar** said it was his understanding that Doug was under investigation for allowing a pot limit game in his card room at Arigotto's. He said if the Gambling Commission had a deal with Doug, then he said the agent's testimony was perjured. He asked, if the Commission did not make a deal with Doug, then why is he presently working at the Tulalip Casino managing the card room tournaments. He said the agents operate like they are not only the law, but they are above the law. He said that's more dangerous than friends playing poker, whether the game is illegal or not.

Mr. Rebar said he can't swear this was an illegal game because he can't calculate the numbers to find out if the game was profitable, but even if the game was illegal and he should have reported it to the Commission, the punishment does not fit the crime. He said being out of work for four and a half months, which has cost him \$11,000 already and he feels that is enough. He said a two-year suspension for not reporting an after-hours game is too severe a penalty for not reporting an after-hours poker game. He said he understands that tens of thousands of dollars were spent on this investigation and there has to be something to show for it, but he said he wants balance and not to be made an example of. He said a closer look needs to be taken at the agents involved in breaking up these games. He said they are coercive and heavy-handed in the way they handle things. He said they use their position as the highest authority.

Acting Chairman Graham asked if he received the newsletter; **Mr. Rebar** said no, he doesn't receive the newsletter, he doesn't know of anyone who does, and he's never seen one. **Acting Chairman Graham** asked if he attended mandatory training; **Mr. Rebar** said yes, that he attended in 1987.

GAMBLING COMMISSION

Ms. Marcus said that Mr. Rebar had his license summarily suspended after he was caught in a raid of an illegal card game in Bremerton, Washington. He asked for and received a full adjudicative hearing where he was allowed to present evidence. After the full hearing, the administrative law judge, Judge Stanford, found that the game was an illegal game and that Mr. Rebar was participating in that game and that he failed to report the illegal activity. The statute further provides that the licensee has the affirmative duty to show, by clear and convincing evidence, that they are entitled to hold a gambling license, and the judge found that the licensee did not meet that affirmative duty and, based on his activity, was not entitled to hold a gambling license.

Commissioner Heavey asked if she's asserting that the burden is shifted to the licensee once charges are filed against them.

Ms. Marcus said no, that the state has the burden of proving that the licensee committed an act under which the Commission has the authority to revoke their license. Once the state met that burden, it was up to the licensees to convince the Commission that, despite this illegal act of which the Commission has the authority to now revoke his license, that he deserves to keep his license by mitigating evidence or other circumstance.

Commissioner Heavey asked if, once a determination is made that there was a violation made, then they have an affirmative duty to establish that they should still keep their license. **Ms. Marcus** said that is what the judge found; and the activities are such that the Commission has the authority to revoke his license.

Ms. Marcus said that facts are that an illegal card game took place in Bremerton, Washington. The licensee testified to this. Agent Drumheller participated in an undercover investigation, got admittance into the card game and observed the card game being played. The licensee has not refuted that the card game, as played according to Agent Drumheller, was played in any other way. A rake was taken from each hand, and in addition, the dealer was toked. The statute does not state that there has to be a profit made in order for the game to be illegal; it states that a game is illegal if a fee is charged to play in the game. A fee was charged in the form of a rake, which was taken out of each hand and did not go to the winner, but went to the house. It

can also be an illegal card game if a person is earning money other than through the winning of a hand. In this game, the dealers were toked on every hand. Based on that evidence, the judge ruled that this was an illegal card game, not a social card game, and was in violation of the criminal gambling statute. Mr. Rebar admitted that he played in this game nearly every week and did not report it. This licensee was responsible for holding up the gambling laws and ensuring that games were properly played, and he was participating in illegal criminal activity every week. Two years revocation is appropriate and is not without precedent. An illegal dice game resulting in licensees having their licenses revoked for five years. Participating in an illegal card game for over seven to eight months, by his own admission, is certainly worthy of a two-year revocation.

Ms. Marcus said that Washington state's public policy says that gambling laws should be strictly enforced, and this commission was formed as a law enforcement agency with the powers of arrest. The statute declares that "recognizing the close relationship between professional gambling and organized crime," and "it is the policy to restrain all persons from seeking profit from professional gambling activity in this state, and to restrain all persons from patronizing such professional gambling activity. **Ms. Marcus** said the people of this state look to the Gambling Commission to regulate these gambling activities in strict compliance with the statute. Here was a licensee participating in illegal, professional, after-hours card games. The people look to have this activity stopped and to have licensees not participate in this activity.

Ms. Marcus said it is important to consider what this says to other licensees. Licensees are told they must obey the gambling laws in order to be qualified to maintain their gambling license. Here is a licensee who, for the past seven to eight months, has been violating the gambling laws. What message is sent to other licensees if he is allowed to keep his gambling license after committing this criminal activity week after week. She said Mr. Rebar violated the gambling statute and violated the criminal statutes of the gambling statute, and a two-year revocation is within public policy of this state and should be enforced.

REBUTTAL

Mr. Rebar said a fee implies profit. By the Gambling Commission's testimony, after nine months of investigation and all this money, there was no profit. He said there is only evidence that he played twice in this game, and he was the one who told them he played every week. He said it doesn't make sense that if he thought this was an illegal activity, that he would admit he played there. He said he's not a danger to the public just because he played poker at a friend's house. He said his license is as important to him as a medical license to a doctor or the bar membership is to the attorney. If he would have gone to the game with a gun and robbed it, it wouldn't have cost him two years.

Acting Chairman Graham said this would be discussed further in executive session to discuss this case. **Mr. Cyr** requested more time to discuss a subject regarding Peter Mullin. **Mr. O'Neal** said it is not part of the Commission's procedure to allow an additional argument once the case has already been argued. **Commissioner Heavey** said Mr. Cyr would have to make a motion to reopen the case, and the commissioners would have to make a determination on whether to reopen.

Emily L. Sands, case #94-0008. Appeal of Revocation of License to Operate as a Cardroom Employee.

Ms. O'Neal said that Ms. Sands has requested that her appeal be stricken from the agenda because she no longer wants to appeal. **Commissioner Heavey** asked if she put that request in writing; **Director Miller** said no, there is nothing in writing. **Ms. Marcus** said she spoke to Ms. Sands and Mr. Cyr verified she is not seeking to appeal. **Mr. Cyr** said that Emily Sands Fraser has married one of the other people also busted at this game and no longer wants to pursue an appeal. She will serve her six month suspension and she requests the return of her \$695, which was confiscated from her at the raid. She also requests the \$1,400 that was confiscated from her husband, John Fraser. She wants to know the procedure for having those funds returned. **Director Miller** said the assets were seized as part of the illegal activity and she can pursue the

appropriate remedy through the Commission's attorney. The Commission will continue to seek forfeiture of those funds to cover the costs incurred, which is a separate issue. There is a procedure in the statute. **Commissioner Heavey** asked if the Commission were to determine that revocation of the license was not supported by the evidence, then would the money confiscated from her be returned automatically. **Director Miller** said it is within the Commission's discretion to direct staff to do so. **Commissioner Heavey** asked Mr. Cyr if his client would still wish to withdraw her appeal faced with the possibility that the Commission may determine that there's not sufficient evidence to revoke the license; **Mr. Cyr** said he only has the instructions from his client that she wanted to terminate her appeal. **Commissioner Heavey** said there is nothing in writing. He asked if Mr. Cyr had fully discussed with Ms. Sands the effect withdrawing the appeal may have on the money that she is asking to have back; **Mr. Cyr** said no, that it was her request that the money be refunded and he did not discuss the effect of terminating her appeal on the return of the money. It was her understanding, through discussions with Roselyn Marcus and someone else in Olympia, that the money would be returned. **Director Miller** said this is the first he's heard of the money issue. **Commissioner Heavey** said this sounds like a conditional withdraw of the appeal.

Commissioner Heavey moved that Ms. Sands' appeal not be stricken from the agenda. **Commissioner Divine** seconded the motion. **Commissioner Heavey** said there is not sufficient evidence to support the revocation of the license, and that issue should be taken up first, and then the matter of returning the money. Vote taken; motion carried to keep Ms. Emily Sands' appeal on the agenda. He said this item will be discussed in executive session.

Mr. Cyr asked that Mr. Mullin's case be reopened for five minutes so that he point out something briefly. **Ms. O'Neal** said the commissioners would have to vote to reopen Mullin's case in order to hear additional testimony. **Mr. Cyr** said the reason for his request to reopen is to point out the differentiation between the three cases as opposed to Mr. Mullin's case; **Commissioner Heavey** moved to deny the request for reopening; **Commissioner Divine** seconded the motion; motion carried.

Acting Chairman Graham asked if Ms. Marcus wishes to make any statements regarding Emily Sands. **Ms. Marcus** said that her only concern is not knowing where the money is being held. If it's being held by the prosecutor's office, then they may not be able to release it until the prosecutor decides.

Acting Chairman Graham called for a recess and then recertification reviews. Executive session will be later.

*** RECESS ***

RECERTIFICATION REVIEWS

Spokane Youth Sports Association, Spokane

Mr. Bishop said they are an athletic organization with a Class "K" bingo license. They've been licensed since 1985. The organization's purpose is to implant in youth of Spokane good sportsmanship and the ideals of good citizenship. The structure is a board that elects four officers; there are 19 voting members. There are six programs for youth ages 6-18; soccer, football, soft ball, baseball, and golf. They also have athletic summer programs and provide indoor recreation programs in their activity center. Services are provided through the use of 24 employees that equal 15.5 FTE's. Primary service area is Spokane County. In addition to their normal programs, last year they provided nearly \$15,000 in contributions and \$40,000 to sponsor youth in sports programs. Net gambling revenues totaled just over 71 percent of their total revenue. This organization is in compliance with the new guidelines for administrative direct program expenditures. The related party

transactions are listed and were reviewed and documented by the Boards. Mr. Merkle provided the Commission with the information. Staff recommends certification as an athletic organization.

Y.W.C.A. OF YAKIMA, Yakima

Mr. Bishop said they are a charitable organization with a Class "K" bingo license, and have been licensed since 1974. They have 230 members, a full time executive director and 17 board members or officers that comprise the management structure. The organization is a member of the National YWCA, and in addition to their normal programs, they also provide a crisis shelter in Yakima. They have eight major programs: child care, voluntary attorney services, A Woman's Place, Working Woman's Wardrobe, residence family crisis program, Tough Love, and also provide a mid-week ski bus for clients. They have 31 employees equaling 30 FTE's. The primary service area is Yakima County. Gambling is not the major portion of their revenues. Last year a little more than 23 percent of their revenues came from gambling. Other funding is from grants, contributions and other associated activities. They are in compliance regarding the amount of money spent on administrative services. There were no significant related party transactions; staff recommends qualification as a charitable organization.

Acting Chairman Graham said these will be voted on as a group.

Commissioner Divine moved for recertification of these two groups; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

DeSALES JR/SR HIGH SCHOOL, Walla Walla

Mr. Bishop said they are a religious organization with a Class "G" bingo license, an area they just recently expanded into. The organization provides education for the Walla Walla County area, preschool through high school, for both Catholic and non-Catholic families. They also have programs for younger children. They have been licensed with the Gambling Commission since 1975; membership is 500, including parents and guardians of the children attending school. There is a full time executive director, three officers, and eight board members. Services provided are general education for the Walla Walla valley area. The Educare Center's curriculum is a mixture of activities that promote reading and creativity for children ages three and four. Clients served last year included 571 students. There are 111 employees equaling 40.4 FTE's. In addition to providing services through the schools, they gave \$101,030 in contributions, which included financial aid and hot lunch programs, and the helping hands program. This is the first year they've been under reporting requirements, so there is no comparative information. A very small part of their revenue comes from gambling, but they say it is a very important part because it represents a large share of their discretionary-type revenue. There were no reported related-party transactions.

Mr. Bishop said this is the first year of qualification for this organization, and the agency performed an in-depth review of bylaws and articles of incorporation. There were some areas that need to be explored further, and staff will continue working with the organization. They need to modify some of their bylaws and organizational structure to meet the statute. Staff recommends temporary qualification as a religious organization. **Commissioner Heavey** wanted to know the length of the temporary status; **Mr. Bishop** said that depends on how long the investigation by staff takes. It is a technical question of whether the school is under the direct control of the Archdiocese of Spokane. The organization is very open to fulfilling the requirements. **Ms. O'Neal** said a time can be set by the Commission; **Commissioner Heavey** moved for temporary qualification for a six-month period; **Commissioner Divine** seconded the motion; motion carried with three aye votes.

SPOKANE VALLEY FOUNDATION, Spokane

Mr. Bishop said they are a charitable organization with a Class "I" bingo license. Their statement of purpose is "to provide transportation, housing, and services to the elderly, mentally and physically challenged in Spokane County." They've been licensed since 1979. The membership is a board structure with 15 board members and no general members. They have a full time executive director. Programs include personal assistance services in the area of transportation and USDA food commodities distribution. They served approximately 30,999 through 21 employees, equaling 2.4 FTE's, and through numerous volunteers. They also made direct contributions of a little more than \$18,000 and provided use of their building to other charitable/non-profit groups. Net gambling revenues totalled 99.1 percent last year.

Mr. Bishop said there were some related party transactions. These issues have been before the Commission before. One issue is the sale of a vehicle to an employee on credit. The loan has been paid off. Another issue is a deferred compensation plan for the past president. The organization provided information on both. There are no written policies regarding conflicts of interest within the organization. Staff recommends qualification as a charitable organization.

Director Miller said there was a recent case settlement with this organization. They made significant progress in their game. **Carrie Sutherland** said the Commission issued a warning and dropped the case. Since the organization has been in compliance with prize payout and net income rules, the case was dropped and they were notified that the Commission would be looking into their executive director's work period and the amount of time he spends on the job. **Director Miller** said there was a concern there with the amount of salary, \$25,000, because of the amount of work being performed. Instead of bringing the matter to hearing, it was dismissed with a strong warning and follow up checks.

Acting Chairman Graham said that the summary of activities show administrative costs to be 45.8 percent. The income is almost all from gambling, and the highest of any of any groups up for recertification today is only 25 percent. The related-party transaction of concern to him involves a past president who receives \$1,000 per month from a deferred compensation arrangement. The arrangement was approved by a former director and never by the Commission. He said the Commission has the right to reopen this issue and find out what this woman did to generate this arrangement, which is set up for life.

Mr. Bishop said the administrative costs are out of compliance with the guidelines passed by the Commission last November, which went into effect January 6, 1994. This reporting period is prior to the effective date of the new requirements. They will receive written notice from the Commission that their administrative costs are out of the guidelines and have time to address it. **Director Miller** said it is technically legal for them to be totally funded by gaming if they choose. **Mr. Bishop** said, by policy, the Commission gives any organization found to be out of compliance with the new guidelines 90 days to correct the problems. They've all been put on notice. Last years data would not be under these guidelines. When their next fiscal year ends, 6-30-94, they will have half a year to report. **Director Miller** said the deferred compensation plan could be addressed more quickly by directing staff to contact the organization and find out the basis for this arrangement and report next month.

Acting Chairman Graham said it was his understanding that there was never a deferred compensation policy set up with this person. **Director Miller** said this group was before the Commission regarding the issue of excessive salaries, and he thinks it is possible that the deferred compensation agreement may have been agreed to as part of a case settlement through the attorneys and the former director. He said he would look into it. He said the mother and son who started the organization are both out.

Acting Chairman Graham withdrew his motion and requested that the compensation package be looked into and an update brought up to the Commissioners. **Mr. Bishop** requested that the Commission grant them temporary certification for 90 days, and staff will prepare a summary of events. **Acting Chairman Graham** moved for 90-day temporary certification. **Commissioner Heavey** seconded the motion. **Commissioner**

Divine excused herself from voting because she has a business relationship with one of the people involved in this matter. **Ms. O'Neal** said the effect of not acting results in automatic temporary certification until the next meeting. The vote could be taken tomorrow when the Chairman is present.

YAKIMA GREENWAY FOUNDATION, Yakima

Mr. Bishop said they are a civic organization with a Class "J" bingo license. Their statement of purpose is to acquire and exchange real property for future parks, land and facilities, and provide education to the public on how to preserve natural areas. They've only been licensed since 1992, and have a substantial membership of more than 1,400 voting members. The board has 22 members. There is a full time executive director. The organization currently operates a park facility in Yakima, the Yakima Greenway, that includes numerous pathways for walking and running, river landings, a lake for fishing and other areas. They serve Yakima County and provide services through six employees equaling 5 FTE's. There are also 500 volunteers. They received a little more than 30 percent of their funding from bingo. This is their first year of reporting. They are in compliance with the administrative expense guidelines, and there were no related-party transactions reported. Staff recommends qualification as a civic organization. **Commissioner Heavey** moved for certification; **Commissioner Divine** seconded the motion, motion carried with three aye votes.

Acting Chairman Graham called for an executive session, with the possibility of reconvening to announce a decision on the hearings on appeal.

****RECESS****

Acting Chairman Graham announced the decision on the case of Peter J. Mullin III, CR #94-0007, and Richard F. Rebar CR # 94-0009. There will be a six-month suspension with time accumulated. There will be an eighteen month probation, and thereafter, any future violation against the laws of the state of Washington will result in a recommendation to permanently revoke their license in this state. They are required to retake licensee training. The Attorney General's Office will put this in official language and copies will be forthcoming.

Ms. O'Neal said this is for both Mullin and Rebar, and is essentially a two-year suspension with eighteen months suspended and credit for time already suspended.

Commissioner Heavey said Mr. Mullin's suspension was stayed previously by Chairman Tull. **Mr. Mullin** said he did not know his suspension was stayed. He said agents came to All Star Lanes to see if he was still employed there and that they told them he did not have a license. **Ms. Marcus** said that Mr. Mullin was informed at the hearing that his suspension was stayed after he made this same claim of not knowing. She said at that time, she submitted into evidence Chairman Tull's letter staying his suspension. **Mr. Cyr** said that letter was sent to Mr. Mullin's incorrect address in Federal Way. **Ms. Marcus** said she gave Mr. Cyr a copy of the letter at the hearing; **Mr. Cyr** said the letter was submitted into evidence but he did not get a copy. **Mr. Mullin** said he just assumed his license was still suspended and did not work. **Acting Chairman Graham** said the original order stands. **Commissioner Heavey** said his understanding is that the decision is credit for the time that a license was suspended.

In the case of Emily L. Sands, CR #94-0008, **Acting Chairman Graham** said the Commission finds not sufficient evidence to support the charges and the case is dismissed. It is suggested that she also go through training since she made comments that she was not familiar with the laws of the state of Washington. He said the Commission relinquishes claims on funds seized.

Acting Chairman Graham said there will be an executive session following tomorrow's meeting. He adjourned until Friday at 10:00 a.m.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, JUNE 10, 1994

Chairman Tull called the meeting to order at 10:05 a.m. at the Whitman Inn, Walla Walla, Washington.

MEMBERS PRESENT: **ROBERT M. TULL, CHAIRMAN; PATRICK GRAHAM, ARDITH DIVINE and EDWARD HEAVEY; and Ex Officio member SENATOR MARGARITA PRENTICE.**

OTHERS PRESENT: **FRANK MILLER, Director; NEAL NUNAMAKER, Deputy Director; SHARON TOLTON, Assistant Director, Special Operations; BEN BISHOP, Assistant Director, Licensing; KIM O'NEAL, Assistant Attorney General; and SUSAN GREEN, Executive Secretary.**

Chairman Tull noted that Commissioner Wanda Mosbarger is absent due to a serious injury she suffered in a car accident that she and her husband were in about three weeks ago. He said anyone wishing more information should contact Susan Green, executive secretary.

Director Miller requested an executive session with the commissioners to discuss pending litigation and pending investigations. He expects it to last approximately 30 minutes.

APPROVAL OF THE MINUTES FROM THE MAY 12-13, 1994, MEETING

Commissioner Heavey moved for acceptance of the minutes from the May 12-13, 1994, Commission meeting in Kent, as set forth and printed in the agenda packet; **Commissioner Divine** seconded the motion; motion carried.

STAFF REPORTS

TRIBAL GAMING

Director Miller said there was an injunction ordered by the federal district court to remove the slot machines in operation on the Spokane reservation. The state views this as an activity without a compact and is in violation of federal law, and the use of slot machines is in violation of the Johnson Act. The court then ordered a two-week stay in order to give the Tribe an opportunity to appeal or seek a stay at the Ninth Circuit Court of Appeals. The Ninth Circuit reviewed the case for two weeks and issued a permanent stay on the injunction, pending appeal of the order to enjoin the operation. This means that the operation will remain running through the pendency of the appeal, which could be six months to two years. This appears to allow for the use of slot machines in the state, which violates our state law.

ADOPT OR AMEND RULES

3. Filed as an intent to Adopt, For Discussion and Final Action:

RULES OF GENERAL APPLICABILITY

(A) Amendatory Section WAC 230-12-040 No Firearms as Prizes

(B) Amendatory Section WAC 230-12-050 Extension of Credit, Loans, or Gifts Prohibited, Limited Exception.

(C) Amendatory Section WAC 230-12-070 Conduct of Gambling Activity

Ms. Tolton said these three are housekeeping changes to make the rules reflect changes in the RCW references and are up for final action today. **Commissioner Graham** moved for adoption of these three rule changes; **Commissioner Divine** seconded the motion; motion carried.

BINGO

(D) New Section WAC 230-20-103 Bingo Cards to be Sold Upon the Premises--Exceptions

Ms. Tolton said this item is continued to the July meeting for final action, per request of the Commissioners and staff. There was a copy of the amended version provided to the commissioners and audience. **Mr. Bishop** said these modifications are the result of meetings with the licensee groups. In item 3(B)iv, they added the value of the ticket to the ticket. Item 4 was added to ensure that each person purchasing such a ticket would have their name on record to facilitate making refunds. At Commissioner Heavey's suggestion, item 7 was modified to clarify closely controlled. Item 8(B) involves methods of controlling refunds. The study group and staff decided it would be easier to make refunds by check to automatically record the refund being made. Item 9 was modified to put a limit on the time a licensee has to make refunds and will put a cut off at the beginning of the scheduled session. The modified version of these rules will be supplied in the July agenda.

Chairman Tull asked if there was anyone in the audience who may not be able to attend the July meeting who would like to testify. Comments will also be accepted in writing.

CARDROOMS

4. Presented by the Recreational Gaming Association; Filed as an Intent to Adopt, For Discussion Only With Final Action today:

Ms. Tolton said that items 4 (A-C) is presented by the RGA, and the group voted unanimously for them to go forward and be approved as presented in the agenda. The petitioner agreed from the beginning to some additional changes proposed in conjunction with staff.

(A) Amendatory Section WAC 230-40-010 Types of Games Authorized

Ms. Tolton said this amendment will add pai gow poker and pan 9 as authorized games to be played in public and social card room licensed by the Commission. Staff recommends adoption with a small change where the game "pan" is used as a nickname for the name "pangue." Staff would like to be consistent by putting "pangue (pan)" to clarify the difference from pan 9.

(B) Amendatory Section WAC 230-40-120 Limits on Wagers in Card Games -- Exception -- Washington Blackjack

Ms. Tolton stated this will allow to structure the wagers in multiple wager card games without increasing the

amount of money wagered. Staff recommends final adoption.

(C) Amendatory Section WAC 230-40-225

House Dealer Allowed in ("Pan")) Card Games

Ms. Tolton said this would allow licensed card room operators to provide a dealer in Pan or poker card games. The word "pan" would be changed to "pangvine." Staff recommends final adoption.

Commissioner Heavey asked if there would be any special training; **Ms. Tolton** said staff receives training in pai gow poker and is already familiar with pan. **Director Miller** said the dealers are not trained by the Commission in how to deal particular games. They will be licensed as card room employees, and will have the ability to deal. This is a departure from what the state has historically had. It's been turned down before because of opposition from the industry. Many of the smaller card rooms will not hire dealers. The advantage is that this gives the Commission a little tighter control because the cards are not being dealt and shuffled by everyone at the table, but only by a licensed person. They cannot participate in house blackjack. There will not be a house dealer in blackjack, only poker and pan. This is consistent with the way Tulalip and Nooksack casinos play in the class II facilities.

Commissioner Heavey asked if it is the practice in the industry to normally have a separate license for dealers. **Director Miller** said there are separate licenses for dealers in tribal gaming, but not with state licensees. Other states may not even license the dealer. He said he didn't know what Nevada does. **Mr. Nunamaker** said card room employees also participate in games to get them going. As dealers, they may act more independently. **Director Miller** said the deal rotates, except in pan where there is currently a house dealer. The deal is required to rotate, and people can waive their right to deal if they choose to. This new rule allows the house to hire an employee to be a center dealer who shuffles the cards and controls the cards without moving it around the table. They don't get a cut or rake, but just control game. It will not be mandatory, but the larger card rooms will be able to take the option if they want to. **Senator Prentice** asked if the dealer will be clearly identify so the other players will know who the dealer is, and are the employees currently dressed any differently when they sit down and play with the other players. **Director Miller** said they wear name tags, and their license and picture are posted on the wall. The dealers will be required to do the same thing. This is not an expansion; the house makes its money by renting the chairs. In tribal class II facilities, they can take a percentage of the pot, but that is prohibited elsewhere in the state. Tipping is allowed.

Senator Prentice asked if they have signs posted in other languages; **Director Miller** said the rules require that the house rules be posted. If players at the table are speaking in other languages, sometimes there are complaints because of the possible collusion. The owner controls this issue.

Fred Steiner, owner of Diamond Lil's Restaurant in Renton and vice president of the RGA, stressed the importance of these rule changes for the industry. They are optional, and some will want to use the opportunity to make the less the games less stressful and less intimidating. More novice players may want to play if they felt more comfortable in the game and didn't have to worry about dealing. Older people would also rather not deal. This will help the industry be on more of a level playing field with the Indians on poker. The standard betting limit structure in the industry is 2/2/4/4 or 3/3/6/6; now they can bet 5/5/5/10, which is \$25 in a four betting structure game. They want to restructure that so the biggest game they could run would be 4/4/8/8 or 4/4/8/9. The RGA voted for these rule changes and passed it. This will give them the opportunity to pick up some new players.

Chairman Tull called for a vote; **Commissioner Divine** moved for adoption of A, B, and C with the clarification; **Chairman Tull** seconded the motion, and said he does not believe this represents a significant change but a positive move for card rooms. **Senator Prentice** said this seems to be a modest change and she's impressed with the effort to bring more professionalism and standards for dealers. If the issue of specific licensing comes up, it is difficult to sell to the Legislature because it adds to the bureaucracy. **Director Miller** said he's more inclined to leave that up to the employer, which has worked well. Vote taken, motion carried.

5. Filed as an Intent to Adopt by WSR 94-10-005, continued by WSR 94-11-094, for discussion only with final action in July.

BINGO

Amendatory Section WAC 230-20-244

Electronic Daubers -- Definition -- Operating Restrictions -- Standards

Ms. Tolton said a revised version of this rule is available for the audience and has been passed out to commissioners. This rule was first introduced in April, and last month was continued to the July meeting for final action.

Mr. Bishop said there were two substantial changes to the rule following last month's meeting. The first is regarding a player's concern about machine players only having to push one button to update all cards for all numbers that have been called, and that would give them the unfair advantage of being able to leave the table and then come back and update everything previously called just by pushing the last number called. To prevent that, a change was made saying that electronic daubers cannot be networked with the bingo game. The manufacturers did not like this change, because two of them presently make machines with this capability. The language was changed to state that automatic or group updates of numbers are prohibited. It will be up to the manufacturers to program out that capability. There were no comments from the bingo committee yesterday on this change.

The second change is that the use of electronic daubers is prohibited when the licensee utilizes any marketing schemes for cards that result in a decrease in per unit price. This is a player protection issue. If there are multiple discount levels, the player using an electronic dauber will be getting a greater advantage if they have more cards. Requirements were added saying they could have a single discount; and initially that the discount could not be more than 25 percent of the minimum. The operators were concerned about that requirement and it was discussed. There will now be language added to prohibit all-you-can-play schemes using the machines and delete 4(G)iii.

Chairman Tull said the wording on automatic updating needs to be improved in ii. Update isn't used elsewhere. **Mr. Bishop** said he would work on that. **Commissioner Heavey** said there was no change made regarding machines being available for disabled players. He requested that be checked against the Americans with Disabilities Act; **Mr Bishop** said Jon McCoy was present at the last meeting and was going to get back to Mr. Bishop with the information but has not done so yet. **Ms. O'Neal** said there isn't any specific standard that will tell how many machine should be required, but as to what is reasonable. She said she's not sure that one machine is a reasonable effort to accommodate people with disabilities. It will depend on how many total players there are and how many disabled people are asking for the machines, the profitability of the game, how much money the operator has available to do that, etc.

Commission Heavey said there is no provision saying if a disabled person does use a machine, do they have to have a minimum buy like all other non-disabled must have. If the minimum buy is much higher than the average buy, then that would appear to be discriminatory. **Chairman Tull** said the question is will some halls be required to put these machines in as an accommodation for disabled people, such as for people who would not otherwise play bingo unless they use the machines. **Director Miller** said next month this rule will be up for final discussion and action; and something will be available at that time on this issue. He said many halls don't use machines. The question is whether disabled people should have first call on the device, which may be one of the ways to resolve the issue. The physical selection of a number is still required. **Commissioner Divine** asked how the machines enhance a disabled person with arthritic hands, for example, play bingo. They still need to punch the numbers. **Director Miller** said it's easier to play if you only have one number to press instead of daubing all the cards.

Mr. Bishop said the language added so far applies to players with disabilities that would restrict their ability to mark cards. That would apply to someone with arthritic hands who couldn't hold a dauber. **Commissioner**

Graham asked the halls how many times they sell out all the machines. **Bill Spencer**, bingo manager for Big Brothers/Sisters of Spokane, said they have 64 machines and run six session a weekend, half of which sell out on machines. There are two or three kept as back-up and they are issued to people with disabilities even if they arrive late. People with eyesight problems and arthritic problems use them, but there isn't really a set pattern of people who use them. **Ms. O'Neal** asked how often they've had to turn away someone with a disability who wanted a machine. **Mr. Spencer** said he can't remember ever turning a player away, because they keep those two or three back-up machines. If the rule is passed, he said people with disabilities will probably call and reserve machines. **Mr. Bishop** said a provision could be added to allow disabled people to reserve ahead of time and still reserve one for walk-ins.

Chairman Tull said there will be one more opportunity for public comment at the July meeting in Silverdale.

6. Presented by Staff for Discussion and Possible Emergency Filing.

CARDROOMS

Amendatory Section WAC-40-050 -- Fees for card playing

Ms. Tolton said this is the result of House Bill 2382 that was signed by Governor Lowry in March and was effective yesterday. It would remain on the agenda for the next two meetings for hearings. **Chairman Tull** said the Commission has the authority to adopt rules without prior hearing as an emergency and then hold hearing opportunities. This rule allows but does not dictate the higher level. **Senator Prentice** asked how long the fee has been limited to \$2; **Director Miller** said eight years. He said not everyone will charge \$3.

Rick Davis, past-president of RGA and representing Charlie Mack's card room and 21-Club card room, said there hasn't been an increase since 1986. When the last increase occurred, they didn't jump right up to the highest level allowed, they went up in small increments. The market will set itself and this new increase will last for another eight or ten years.

Commissioner Graham moved for emergency adoption and filing for further consideration and eventual regular adoption; **Chairman Tull** seconded the motion, motion carried. **Ms. Tolton** said this will be filed on Monday and becomes effective at that time. **Chairman Tull** said that, in the future, when the industry is successful in the legislature, they should make sure we update our rules on a more routine basis. **Director Miller** said the agency was late in bringing this forward.

7. Presented by Washington State Federation of Clubs for Discussion and Possible Filing.

BINGO

Amendatory Section WAC 230-20-246 -- Manner of conducting bingo

Ms. Tolton said the petition allows for bingo licensees not to have to call irrelevant numbers or symbols, such as the N-row in an X in the center of a card. They will continue to show it, but do not want to have to call it because it takes time and slows down the game. There has been some inconsistent responses from staff in how they deal with this.

Bud Smith said he is here on behalf of Lynn Melby to answer any questions. He said there are about seven or eight games in bingo that do not require the N row to be called, such as the bow tie, butterfly, and kite. It slows up the game when it has to be put on the screen and called. **Chairman Tull** said, if this is filed, perhaps someone could prepare a handout showing the different bingo games he referred to.

Commissioner Heavey moved to file for further discussion; **Commissioner Graham** seconded the motion, motion carried.

UNFINISHED BUSINESS

Director Miller said that yesterday there were questions regarding the recertification of Spokane Valley Foundation and a deferred compensation arrangement they have with a former executive director. The organization pays the past executive director \$1,000 in deferred compensation. This was put in place around 1990 and staff will be looking into how this arrangement came about. Pending that research, staff has requested temporary 90-day certification pending final review. **Commissioner Graham** moved for temporary certification; **Commissioner Heavey** seconded the motion, motion carried with three votes. **Commissioner Divine** abstained from voting.

COMMENTS OF PUBLIC OR PUBLIC OFFICIALS

No one came forward.

CASINO NIGHTS/Fund Raising Events

Commissioner Graham reported on the ongoing investigation of fund raising events. He said Mr. Nunamaker has polled his staff regarding this issue, and the results indicated that maybe fund raising events are no longer warranted in the state of Washington. He asked that staff contact Mr. Lynn Melby to poll the fraternal organizations on their views because those groups most often utilize fund raising events. He said a final recommendation should go to the Governor in September.

CARD ROOM OPERATORS

Commissioner Graham said that many card room employees have pled ignorance when it comes to the gambling laws. In an effort to prohibit these types of illegal games, he moved that all card room card dealer licensees shall, upon renewal of their license, attend mandatory training one time and that this training include specific instruction on illegal card games, illegal bookmaking and reporting responsibilities. He said there could also be a test included, so the licensee will have in their record proof that they understand the law. **Ms. O'Neal** said it should be all card room employees. **Commissioner Graham** agreed.

Mr. Bishop said that staff has the same concerns and has been working on a program to put together an affidavit that goes with the license renewal. The one developed has 15 specific items listed that annually they will review and sign as a part of the license application. **Chairman Tull** said that, in conjunction with periodic training is a good idea. He said Commissioner Graham's motion is construed as one that asks staff to bring before the Commission a proposed rule requiring such mandatory training. **Commissioner Heavey** seconded the motion; motion carried. **Commissioner Graham** concurred with Chairman Tull's statement. Vote taken; motion carried. **Chairman Tull** said that once staff drafts something on this, it should be forwarded to Commissioners Graham and Heavey for comments and then it can be placed on the agenda. **Senator Prentice** asked if this would be the same training or something designed more like continuing education for those who have already gone through the training. **Director Miller** said there will be a difference in the training to cover more of the illegal area. There has never been a test before, but that might be a good approach to reenforce what is required of them as card room employees. **Chairman Tull** said he feels that an affidavit and training seems more appropriate than a test, but that will be further discussed as this moved along through the process.

Chairman Tull called for a vote; motion carried unanimously.

Senator Prentice said things are changing in this state rapidly, and there will be challenges to the gambling area to remain on course. She has observed that the modest increase in fees and other items are necessary. She said the Commission has truly balanced any criticism by keeping a stronger handle on things by requiring additional training. She said some people viewed items such as HB 2382 as major expansion gambling.

Chairman Tull reported on the meeting that he, Sen. Prentice and Director Miller attended at the Nisqually

Tribal Center about three weeks ago. The meeting involved the Governor, all tribes, the Attorney General and legislators. He said Director Miller is known as the "lightning rod" for criticism of the negotiations process and he has done a fine job. Governor Lowry said he is opposed to slot machines in the state and to the expansion of gambling. The big issues, such as slots, need to be addressed in some other forum, and possibly the federal court system will resolve these issues. **Senator Prentice** said that Attorney General Christine Gregoire mentioned that the 10th and 11th amendments are the state's sovereignty and the state cannot back down from that. **Chairman Tull** said the issue of sovereignty is foremost for the tribes, but they tend see state sovereignty issues as different.

Chairman Tull called for an executive session to conclude matters involving pending litigation and pending investigations.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Secretary